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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY DEAN HECKMAN,

Defendant and Appellant.

E056918

(Super.Ct.No. FVI1201025)

OPINION

APPEAL from the Superior Court of San Bernardino County. John P. Vander Feer, Judge. Affirmed.

Robert V. Vallandigham, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Gary Dean Heckman pleaded no contest pursuant to a plea agreement to one felony count of possession of a controlled substance (hydrocodone) in violation of Health and Safety Code section 11350, subdivision (a). Defendant requested immediate sentencing, and the trial court granted probation on specified terms and

conditions. Defendant filed a notice of appeal, contending that the search warrant that led to the discovery of the drugs was unlawful. He requested and was denied a certificate of probable cause. We affirm the judgment.

FACTS AND PROCEDURAL HISTORY

Police officers were executing a search warrant at a residence. Defendant rented a room in the residence where the search warrant was being executed. The officers conducting the search removed defendant from his room, handcuffed him, and took him to the living room. The officers stated that they intended to search defendant's room, and asked if there was anything in the room that might injure them. Defendant said that he had some needles in a dresser drawer. The officers found the needles and some other items. One of the officers told defendant that, to speed up the search, it would help if he would indicate the location of any other illegal items. Defendant said that he had some hydrocodone and Vicodin pills in his room. The officers recovered these items.

Defendant was charged by a felony complaint with one count of violation of Health and Safety Code section 11350, subdivision (a), for possession of hydrocodone. Defendant was arraigned on the complaint and he pleaded not guilty. The matter was set for a preliminary hearing.

At a conference before the preliminary hearing, defendant agreed to change his plea. Defendant agreed to plead no contest to the charge, in exchange for admission to drug court probation under Proposition 36. Defendant would receive credit for 11 days of actual custody, plus 11 days of presentence conduct credit, for 22 total days of custody credit. The court imposed various terms and conditions of probation, including a term that defendant

serve 11 days in the county jail, with credit for time served; he was ordered released upon pronouncement of judgment.

A month after the plea, in July of 2012, defendant requested and received a modification of the terms of probation, extending the time to pay the fines imposed by his sentence.

Defendant filed a notice of appeal on August 8, 2012, indicating that the appeal was based on an issue requiring a certificate of probable cause.¹ Defendant's notice of appeal specified as grounds that he asserted the search warrant was illegal, and that he had only agreed to a plea bargain because he had been promised he would be released from custody on the day of the plea. The trial court denied defendant's application for a certificate of probable cause.

This court appointed counsel to represent defendant on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case and a number of potential issues, but has raised no substantive argument.

¹ The notice of appeal contains several additional markings. The notice was originally stamped as "filed" on August 8, 2012, in the box on the upper right hand side of the form. The "filed" designation was then lined through, and a handwritten and initialed designation of "received" was added immediately above the stamping. In the lower right side of the form, a "received" stamp was dated August 8, 2012. Above the August 8, 2012 markings, in the upper right hand corner, another handwritten notation was made: "Inoperative." The notice contains a second "filed" stamp, with a date of August 10, 2012, to the left of the original stamping box.

ANALYSIS

When counsel has filed a brief raising no specific issues, this court must conduct a review of the entire record to determine whether the record reveals any issues that would result in reversal or modification of the judgment, if the issue were resolved in the appellant's favor. (*People v. Wende, supra*, 25 Cal.3d 436.) Counsel has requested such a review in this case. Defendant has also been provided the opportunity to file a personal supplemental brief, which he has not done. Under the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

The potential issues identified in appellate counsel's brief are:

1. Was the plea waiver, including the waiver of defendant's trial rights, valid?
2. Is the plea waiver issue appealable without the issuance of a certificate of probable cause?
3. Were the terms and conditions of probation, including the fines and fees, valid?
4. Is the issue of probation terms cognizable on appeal without an objection in the trial court?
5. Were defendant's sentencing credits properly calculated?
6. Was the search and seizure described in the police report valid?
7. Can a search and seizure issue be raised on appeal in the absence of a motion to suppress in the trial court?
8. Are any issues cognizable on appeal in light of the "inoperative" notation on the notice of appeal?

A complete review of the record shows:

1. The trial court fully and fairly advised defendant of his trial rights, and established a factual basis for the plea; the waiver was valid. (*People v. Holmes* (2004) 32 Cal.4th 432, 435.)

2. In order to appeal after a conviction by plea of guilty or nolo contendere, a defendant must obtain a certificate of probable cause from the trial court. (Pen. Code, § 1237.5.) The issues cognizable are limited to issues based on “reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings” resulting in the plea. (*Ibid.*) The issuance of a certificate of probable cause does not expand the grounds upon which an appeal may be taken, but relates only to the manner of perfecting an appeal from a judgment after a guilty plea. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364.) Without a certificate of probable cause, any issues going to the validity of the plea are not cognizable on appeal. (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1178.)

3. The terms and conditions of probation are valid. For example, the term requiring defendant not to associate with users of illegal drugs expressly requires that defendant have knowledge that they are users of illegal drugs, and also makes an express exception for participants in defendant’s recovery program.

4. Whether or not an objection would be required, our review establishes no objectionable terms of probation.

5. Defendant received the most lenient calculation of presentence custody credits. He received one-for-one credit of 11 days actual service plus a full 11 days of conduct

credit. He committed his crime after October 1, 2011, and was entitled to the new credit earning rate. (Pen. Code, § 4019.)

6. The police report does not disclose any basis upon which to challenge the validity of the warrant or search.

7. Appellate review of the search and seizure claim is forfeited by the failure to raise it below. (See *People v. Tully* (2012) 54 Cal.4th 952, 980 [constitutional claims are not reviewable on appeal when not presented to the trial court; “ ‘[a] party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct’ ”].)

8. The “inoperative” notation on the notice of appeal does not present any obstacle to the appeal. The most plausible interpretation is that the “inoperative” notation refers to the initial “filed” stamp of August 8, 2012, and the handwritten and stamped “received” notations of the same date. The document bears an unaltered “filed” stamp of August 10, 2012, which would have superseded the earlier notations. However, the record discloses no arguable issues.

DISPOSITION

The judgment is affirmed.

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McKINSTER

J.

We concur:

HOLLENHORST

Acting P. J.

CODRINGTON

J.